IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6725 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

PRAVINSINH RAMSINH RATHOD

Appearance:

MR HARDIK C RAWAL for the Petitioner.

MR MUKESH H RATHOD for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 23/07/2002

ORAL JUDGEMENT

Rule. Mr.Rathod waives service of rule on behalf of the respondent.

With the consent of the parties, the matter is heard finally today.

The petitioner was subjected to departmental proceedings for remaining absent unauthorisedly for about one month. The petitioner was serving at the relevant time on the post of Conductor. On conclusion of the enquiry, the Disciplinary Authority dismissed him from service. The petitioner, ultimately, challenged the aforesaid dismissal by raising industrial dispute. The Dispute was referred to the Labour Court, Valsad and the same was numbered as Reference (LCV) No.1048 of 1998. The Labour Court came to the conclusion that the aforesaid misconduct of remaining absent without leave is proved. However, while exercising the powers under Section 11-A of the I.D. Act, the Court came to the conclusion that this is not a case in which maximum penalty was required to be inflicted on the concerned workman. The Labour Court, while exercising powers under Section 11-A of the I.D. Act, set aside the order of removal and, instead passed an order of reinstatement with 75% back wages. The said order is challenged by way of this petition at the instance of the S.T. Corporation.

Mr.Raval, appearing for the Corporation, strenuously argued that once the misconduct is proved, the Labour Court, while modifying the order of penalty, has not passed any order of penalty at all. He submitted that withholding of 25% back wages for the intervening period can never be said to be any 'penalty'. In his submission, once the Court has exercised the powers under Section 11-A, the Court should have substituted the penalty by inflicting some penalty, while, in the instant case, no penalty is inflicted upon the concerned workman.

I have heard Mr.Raval in detail. I have also gone through the record. In my view, there is some force in the argument of Mr.Raval. It is an admitted fact that the Labour Court has arrived at a conclusion that the misconduct is proved. Under these circumstances, while exercising the powers under Section 11-A of the I.D. Act, the Court should have substituted the penalty by imposing some penalty, as these powers are available with the Labour Court. Withholding of back wages of 25% can never be said to be a penalty inflicted upon the said workman. Under these circumstances, the order of the Labour Court is required to be interfered with. Accordingly, while confirming the order of reinstatement, in my view, the concerned workman should also be subjected to withholding of two increments. However, learned Advocates of both the sides have left the aforesaid question of imposing penalty to this Court and, in my view, withholding of two increments with future

effect will be a just and proper penalty in the facts and circumstances of the case. In that view of the matter, the order of the Labour Court is modified and the order of reinstatement is confirmed. However, the concerned workman will be subjected to the penalty of withholding of two increments with future effect. The order of the Labour Court in granting 75% back wages to the respondent is modified and the respondent is ordered to be given Rs.25,000/- towards back wages for the intervening period. Mr.Raval submitted that as per the Award of the Labour Court, the concerned workman will be required to be paid Rs.2,60,976/-, which will be 75% back wages. However, in my view, in the facts and circumstances of the case, the said amount of back wages also should be restricted to the amount of Rs.25,000/- so that, in future, there may be some deterrent effect on the concerned workman. The order of the Labour Court is accordingly modified to the aforesaid extent, with reinstatement and back wages to the tune of Rs.25,000/-, in all, with a penalty of withholding of two increments with future effect. However, it is clarified that the concerned workman will be entitled to the regular salary from the date of the Award till he is reinstated in service. The order of reinstatement as well as the order of payment of back wages, as indicated above, may be complied with within a period of one month from today.

The petition is accordingly allowed. Rule is partly made absolute to the aforesaid extent, with no order as to costs.

23rd July, 2002 (P.B. Majmudar, J.)

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(apj)